



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

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**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

**FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR
VERIZON / WOODSIDE FARM CONDITIONAL USE PERMIT**

FILE NUMBER: PCUP00-18-0011

PROPERTY OWNER: WOODSIDE FARM FAMILY, LP
421 WILLIS LANE
OLGA, WA 98279

APPLICANT: VERIZON WIRELESS

AGENT: SARAH TELSCHOW, AICP
ODELIA PACIFIC CORPORATION
5506 6TH AVENUE SOUTH, SUITE 202
SEATTLE, WA 98108

APPLICATION: CONDITIONAL USE PERMIT –
TO AUTHORIZE A NEW WIRELESS TELECOMMUNICATIONS FACILITY,
INCLUDING A 140' MONOPOLE WITH ASSOCIATED EQUIPMENT

SITE LOCATION: NEAR THE TOP OF HILL ON A 33.32-ACRE PROPERTY, LOCATED AT 421
WILLIS LANE, NEAR OLGA, ON ORCAS ISLAND

TAX PARCEL NUMBER: 161523001000

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

SUMMARY OF DECISION: *APPROVED – SUBJECT TO CONDITIONS*

DATE OF DECISION: JANUARY 7, 2019

SJC DEPARTMENT OF
JAN 07 2018
COMMUNITY DEVELOPMENT

I. SUMMARY

Woodside Farm Family, LP owns a 33+acre property that includes an elevated, forested area upland and north of Obstruction Pass and west of a small shoreline area along Rosario Strait, east of Olga, on Orcas Island. Verizon Wireless seeks a conditional use permit on the Woodside Farm site to authorize development of a new Wireless Telecommunication Facility intended to provide and enhance coverage in the rural residential areas surrounding Olga, generally located east of Woodside Farm Road, West to Olga Road, north to Point Lawrence Road, and South to Obstruction Pass Road. (*Ex. 22*).

As discussed below, the applicant has satisfied its burden to demonstrate compliance with applicable approval criteria, so the requested Conditional Use Permit is approved.

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

All witnesses who offered testimony at the public hearing held on November 28, 2018 were placed under oath. Julie Thompson, the County's planner assigned to review the pending application, summarized her review, proposed conditions, and noted that no one provided comments or raised issues opposing the requested permit. Staff recommended approval, subject to appropriate conditions. Sarah Telschow, AICP, the applicant's permit consultant/agent appeared at the public hearing, answered questions from the Examiner, and fully supported the analysis and proposed conditions provided in the Staff Report without objection or request for any modifications. No one submitted written comments or appeared at the hearing to oppose or challenge the requested permit.

EXHIBITS:

- A. Staff Report, prepared by Project Planner, Julie Thompson, dated November 14, 2018;
 1. Request for review dated 7/25/2018
 2. Determination of Non-significance dated 7/25/18
 3. Application materials and project description 5/3/18
 4. Environmental checklist dated 5/1/18
 5. Site plan and maps
 6. Option and Land Lease Agreement dated 4/26/18
 7. Verification of mailing dated 9/13/18
 8. Photo simulation of proposed facility date stamped 12/26/17
 9. Sherwin Williams rock garden color sample
 10. FAA Determination of No Hazard to Air Navigation dated 07/19/16

11. Acoustical Report from SSA Acoustics dated 10/27/17
12. SJC suitability map for wireless facility locations dated 3/8/02
13. Letter from Verizon to property owners about pre-application meeting, undated
14. Legal ad for pre-application meeting
15. Letter from Verizon to property owners re: balloon launch, undated
16. Appraisal Report from Integra Realty Resources dated 1/29/15
17. Legal ad dated 7/25/18
18. Legal ad dated 9/12/18
19. Verification of posting dated 10/26/18
20. Geologic Hazard Report from Adapt Engineering dated 6/22/17
21. Geotechnical engineering Evaluation from Adapt Engineering dated 6/13/17
22. RF Documentation from Verizon, undated
23. FCC licenses dated 1/11/18
24. Radio frequency emissions compliance from Andrew Thatcher dated 9/5/17
25. Permit fee receipt dated 5/8/18
26. Email to process partial permit fee refund, due to inadvertent overcharge for SEPA review that was already included/required as part of CUP permit review, from Julie Thompson, dated 5/16/18

III. APPLICABLE LAW

Jurisdiction.

Under SJCC 18.80.090(C), if a development application is processed as a Conditional Use Permit application, “the Hearing Examiner is the decisionmaker.” SJCC 18.80.100(C), captioned “Decisionmaking Authority”, provides that “[t]he hearing examiner has the authority to approve or deny conditional use permit ... applications, and to impose conditions of approval on such permits.”

Conditional Use Permit required for “Personal Wireless Service Facility” on Rural Farm Forest property.

The “allowability” of various land uses is found in a table codified as SJCC 18.30.040. There is no dispute that the type and nature of the proposed Personal Wireless Service Facility requires a conditional use permit. (*See SJCC 18.30.040 Land use table for rural, resource, and special land use designations*).

Criteria for CUP approval.

The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner. In addition, Personal Wireless Service Facilities such as that proposed in the pending application must satisfy regulations and review procedures found in SJCC 18.40.590.

Burden and Nature of Proof.

Under SJCC 18.80.040(B), “[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law,

County development regulations, the Comprehensive Plan, and the applicant meets its burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied its burden of proof to meet the criteria for Conditional Use Permit approval?

Short Answer: Yes, subject to conditions.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.
2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Summary provided above.
3. In May of this year, the applicant, Verizon Wireless, submitted materials seeking a Conditional Use Permit authorizing development and construction of a new wireless telecommunications facility intended to provide and enhance coverage in the rural residential areas surrounding Olga, generally located east of Woodside Farm Road, West to Olga Road, north to Point Lawrence Road, and South to Obstruction Pass Road – essentially the southeast peninsula forming the bottom of Orcas Island facing Obstruction Pass. (*Ex. 22; Testimony of Ms. Telschow*). The applicant will lease the project site from the property owner, Woodside Farm Family, LP. (*Staff Report, page 2; Ex. 6, Option and Land Lease Agreement*).
4. The application materials cite FCC data indicating that 70% of all 911 calls are made from mobile phones, like those served by the proposed new wireless facility. (*Ex. 3, Project Description, at page 10*). The applicant’s agent explained how topographic conditions in the proposed service area make it difficult to provide reliable service and coverage in many rural portions of the County, with hills, trees, water and other features. Existing conditions also make it difficult to provide consistent service coverage “in-building”, i.e. through walls of homes and businesses. (*Ex. 22, explanation of coverage problems and justification for proposed new facility*). So, additional facilities designed to blend-in with surroundings are used to address increased demand and service needs. (*Testimony of Ms. Telschow; Ex. 22*).
5. This project includes a new 140-foot monopole that will be dark green in color, consistent with the surrounding trees in the forested area where it will be located. Specifically, the Staff Report and application materials (*Ex. 9*) explain that the proposed tower and all attachments will be

painted Sherwin Williams Rock Garden (SW6195) using a non-reflective finish, which is meant to appropriately camouflage the new facility.

6. The full project description provided in the application materials includes the new monopole tower, with six flush-mounted panel antennas, a possible future microwave dish, auxiliary equipment, three equipment cabinets that will house radio equipment and/or batteries, and a 20kw diesel back-up generator. (*Staff Report; and Ex. 3, application materials, Project Description on page 2, design plans, Sheets A-2 through A-5*).

7. The Staff Report and exhibits in the Record establish how the pending application has been reviewed and subject to public notices soliciting feedback from local residents, businesses and other government agencies. (*Staff Report; Exhibits 1, 2, 7, 13, 14, 15, 17, 18, and 19*). This included several outreach efforts to surrounding residents and property owners, including a notice about a balloon test wherein the applicant flew a large brightly-colored balloon on the site and up to the height proposed for the new monopole tower, to give people an opportunity to view the balloon and see how tall the new tower would be on the Woodside property. (*Ex. 15*).

8. No one submitted any written comments, or appeared at the public hearing, to express opposition or otherwise challenge any aspect of the proposed new wireless facility.

9. Consistent with applicable Federal and State laws, San Juan County has adopted local regulations and standards for telecommunication facilities such as that proposed in this application. San Juan County regulations for Personal Wireless Service Facilities (PWSF) are found at SJCC 18.40.590. These include specific standards addressing: application and notice requirements; limits on storage of equipment and materials at a site; minimization of visual impacts; maintenance; color; lighting restrictions; noise limits; removal following abandonment or discontinued use; preferred locations; setbacks; height (lowest necessary, not to exceed 150 feet); and required design to accommodate future co-location.

10. The Staff Report (on pages 5-16), application materials, and the testimony of Ms. Thompson and Ms. Telschow, all constitute a preponderance of credible and un rebutted evidence demonstrating how the proposed new facility has been designed or can be conditioned to comply with applicable county codes, policies and regulations regarding Personal Wireless Service Facilities, including without limitation those found in SJCC 18.40.590.

11. The project was subject to SEPA review, which included a thorough Environmental Checklist submitted by the applicant and other environmental information, including materials confirming that the proposed height is the minimum needed to achieve the purpose of the new facility; that the facility will comply with applicable standards addressing radio frequency emissions; that the facility has been designed to blend-in to the surrounding area; that noise will be minimized; that the design considered relevant geotechnical engineering reports; and that the proposed design provides ‘camouflage’ (*Ex. 4, SEPA Checklist; Ex. 11, acoustical report; Exs. 20, 21, geotechnical report and engineering evaluation; and Exs. 22 and 24, radio frequency emission documentation and compliance materials*).

12. In late July of 2018, staff considered the SEPA checklist, other relevant environmental documentation, and applicable county codes and policies and issued a SEPA Determination of Non-Significance for the proposed facility. (*Ex. 2*). No one offered any comments challenging the DNS, and no one appealed the DNS issued for the pending matter.

13. The facility will not require regular on-site staff, just periodic maintenance and inspections, so it will not require water or sewer facilities. The proposed site is near an existing power line corridor through the forested area, so electrical supply is readily available.

14. As with all permits issued by the County, this permit does not waive or excuse an applicant's obligation to comply with: any utility service provider's lawful regulations or requirements, or its obligation to obtain approvals required to operate the proposed wireless telecommunication facility from any other governmental entity with jurisdiction over any aspect of such use.

15. Substantial, un rebutted evidence in the Record establishes that the applicant has met its burden to satisfy the criteria for approval of a Conditional Use Permit, found in SJCC 18.80.100(D)(1-10), as detailed and explained in the Staff Report, on pages 16-18. All findings and statements of fact contained in those portions of the Staff Report are hereby adopted by reference and incorporated herein as findings of fact by the Examiner supporting this Decision approving the requested Conditional Use Permit.

VI. CONCLUSIONS OF LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Conditional Use Permit for Verizon Wireless's project (a new 140' monopole tower, with six flush-mounted panel antennas, a possible future microwave dish, auxiliary equipment, three equipment cabinets that will house radio equipment and/or batteries, and a 20kw diesel back-up generator), to be located on the Woodside Farm property, conforms to all applicable land use requirements and appropriately mitigates adverse environmental impacts, including without limitation specific County codes and policies regarding Personal Wireless Service Facilities found in SJCC 18.40.590. Upon reaching such findings and conclusions as noted above, the CUP application meets the standards necessary to obtain approval by the County.

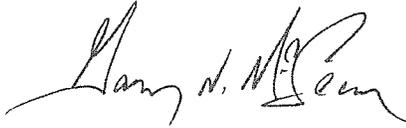
2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.

3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's online site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the new Verizon Wireless telecommunication facility, as described in File No. PCUP00-18-0011, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 7th Day of January, 2019

A handwritten signature in black ink, appearing to read "Gary N. McLean". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Verizon Wireless / Woodside Farm, LP
Conditional Use Permit for Wireless Telecommunication Facility
421 Willis Lane, Orcas Island
Tax parcel number 161523001000
File No. PCUP00-18-0011

A. This Conditional Use Permit applies to the proposed wireless telecommunication facility described in File No. PCUP00-18-0011 to be located on tax parcel number 161523001000, 421 Willis Lane, on Orcas Island.

1. The facility shall be sited as shown on the site plan and be screened from view by adjoining properties where necessary.
2. A Stormwater Management Plan appropriate in scope shall be submitted at the time a building permit application is submitted.
3. This permit for a Personal Wireless Service Facility (PWSF) shall become null, void and nonrenewable if the facility is not constructed and placed into service within four years of the date of the issuance of the permit. A new permit will be required for subsequent use of the site.
4. No on-premises storage of material or equipment shall be allowed other than that used in the operation and maintenance of that particular facility and site.
5. The carrier shall maintain the facility and any adjacent trees or landscaping. Such maintenance shall include painting, maintaining structural integrity, and topping of trees, if necessary.
6. If site lighting is proposed, it shall be directed downward and shielded to prevent direct illumination of neighboring property. It shall also remain unlit except when authorized personnel are present.
7. The applicant and landowner shall remove all improvements when the operation of a PWSF is discontinued for more than 24 consecutive months. If the facility is not removed, after providing written notice and an opportunity to be heard, the County shall remove the facility and bill the landowner and applicant who shall be jointly and severally liable for the associated cost including administrative costs. These conditions shall apply to the original applicant, the landowner(s) and all successors.
8. When use of a PWSF is discontinued, the owner of the facility or his successor shall provide written notice to the Director.
9. Within 90 days after the discontinuation of operation, the owner of the facility or the landowner shall dismantle and remove the PWSF and properly dispose or store of all equipment and debris, thereby leaving the property where the PWSF was located free from any sign of the former facility.
10. To ensure removal of stand-alone towers the property owner must provide the County with a bond covering 150 percent of the estimated cost of removal.
11. Failure to comply with conditions of approval is grounds for revocation of this permit.
12. Upon determination by the Director of DCD that any condition listed above has been violated and following issuance of a Notice of Violation, the Director may, in addition to other code enforcement remedies, revoke the conditional use permit.

EFFECTIVE DATE, APPEALS, VALUATION NOTICES

Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.